



HCS and TxHmL RULE AMENDMENTS

EFFECTIVE SEPTEMBER 1, 2014

A DADS PRESENTATION

PART I

Terminology

Definitions

Services

And

Rule References (Chapter 49)



TERMINOLOGY CHANGES

- *DADS data system* **replaces** *CARE*
- *Host home/companion care* **replaces** *foster/companion care*
- *RN or LVN* **replaces** *a licensed nurse*
- *Local Authority* **replaces** *MRA*
- *ICF/IID* **replaces** *ICF/MR*
- *ID/RC* **replaces** *MR/RC*
- *Intellectual Disability* **replaces** *mental retardation*

TERMINOLOGY CHANGES (CONT.)

- *Professional Therapies* **replaces** *specialized therapies*
- *Contract* **replaces** *Provider Agreement*
- *Disability Rights Texas* **replaces** *Advocacy Inc.*
- *CDS* is now referred to as *the CDS option*
- *FMSA--Financial management services agency* **replaces** *CDSA--Consumer directed service agency*

TERMINOLOGY CHANGES (CONT.)

- *Alleged victim* has been **replaced** with *individual*
- *Fair Hearing* – Language was changed to state that applicant or LAR “*receives notice of the right to request a fair hearing*”
- *Service component* has been **replaced** by *service*.
- *Paid employment* has been **replaced** by *competitive employment*

TERMINOLOGY CHANGES (CONT.)

- *Disability* has been **replaced** by *assessed needs*
- *Support Methodologies* has been **replaced** by *implementation plan** (TxHmL Only)

DEFINITION

Alternate Contact - §9.178(z) and §9.580(s)

The program provider must ensure that:

- The name and phone number of an alternate to the CEO of the program provider is entered in the DADS data system; and
- The alternate to the CEO:
 - performs the duties of the CEO during the CEO's absence; and
 - acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual and complies with subsections (k)-(n) of this section.

DEFINITION

Critical Incident - §9.153, §9.178 and NEW §9.180 & §9.553, §9.580 and NEW §9.584

- The term “unusual Incident” was stricken from the rule. Some types of unusual incidents are now incorporated into the definition of *critical incident*.
- The term *critical incident* is now defined as an event listed in the HCS Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/WaiverGuide.html> and in the TxHmL Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/txhtmlGuide.html>.

DEFINITION:

Calculation of Co-payment

TxHmL Only §9.557

- Section §9.557 was repealed because the description in the rule is no longer accurate and the calculation method is contained in policies promulgated by HHSC.

DEFINITION:

CONDITION OF A PERVASIVE NATURE

A condition in which a program provider is out of compliance with a certification principle as evidenced by one of the following:

- A. The following two conditions are met:
 - i. at least 50 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance; and
 - ii. at least one item from an additional sample, at least the same size as the initial sample, shows non-compliance; or
- B. If DADS is not able to obtain an additional sample as described of this paragraph, at least 51 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance.

DEFINITION:

CONDITION OF A SERIOUS NATURE

A condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

DEFINITION: HAZARD TO HEALTH OR SAFETY

A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

DEFINITION:

NON-ROUTINE CIRCUMSTANCES

An event that occurs unexpectedly or does not occur on a regular basis, such as a night off, a vacation, an illness, an injury, a hospitalization, or a funeral .

DEFINITION - MICROBOARD

A program provider:

- A. that is a non-profit corporation:
 - i. that is created and operated by no more than 10 persons, including an individual;
 - ii. the purpose of which is to address the needs of the individual and directly manage the provision of Program services; and
 - iii. in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of Program services; and
- B. that has a service capacity designated in the DADS data system of no more than three individuals.

DEFINITION ELIGIBILITY CRITERIA §9.155 AND §9.556

The rule recognizes individuals in one of the following categories as eligible for enrollment through a new reserve capacity group:

- Individuals with LOC I or VIII residing in a nursing facility immediately before enrolling
or
- Individuals with LOC I or VIII at risk of entering a nursing facility.

HCS ELIGIBILITY CRITERIA

The adopted rules clarify who can be offered a program vacancy based on waiver target groups or being listed at the top of the interest list.

The following are no longer listed in the rule as eligible for a program vacancy:

- Applicants for whom DADS has proposed to terminate or has terminated TxHmL Program services because the applicant no longer has an approved TxHmL IPC; or
- Applicant's whose TxHmL services do not ensure the applicant's health and welfare are not a reserve capacity group in the waiver and therefore cannot enter the waiver in front of individuals on the interest list.

DEFINITION: RELATED CONDITION

A severe and chronic disability that:

A. is attributed to:

- i. cerebral palsy or epilepsy; or
- ii. any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

RELATED CONDITION (CONT.)

- B. is manifested before the individual reaches age 22;
- C. is likely to continue indefinitely; and
- D. results in substantial functional limitation in at least three of the following areas of major life activity:
 - i. self-care;
 - ii. understanding and use of language;
 - iii. learning;
 - iv. mobility;
 - v. self-direction; and
 - vi. capacity for independent living.

DEFINITION: TRANSPORTATION §9.177(k) and §9.579(k)

The program provider must ensure that a service provider who provides transportation:

1. has a valid driver's license; and
2. transports individuals in a vehicle insured in accordance with state law.

OTHER DEFINITION CHANGES OR ADDITIONS

- **Business day** – Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).
- **Calendar day** – Any day, including weekends and holidays.
- **Vendor hold** – A temporary suspension of payments that are due to a program provider under a contract.

SERVICES

IPC REQUIREMENTS §9.159

The adopted amendments also add criteria that requires each service on an individual's IPC be the most appropriate type and amount, cost effective and necessary to enable community integration and maximize independence. These changes help ensure that HCS Program services legitimately meet an individual's needs in a cost effective manner and address changes made to the HCS waiver application approved by CMS. The adopted amendments also describe current criteria for an adaptive aid and minor home modification included on an individual's IPC.

SERVICES

Expansion of Program Provider Qualifications -§9.177 and §9.579

The amendment *added Licensed Clinical Social Workers and Licensed Professional Counselors* to the list of qualified providers of behavioral support services.

SERVICES

BEHAVIORAL SUPPORT SERVICES

§9.177(j) & §9.557(o)

The program provider must ensure that a service provider of behavioral support services:

- is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;
- is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;
- has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;
- is certified by DADS as described in §5.161 of this title (relating to TDMHMR-Certified Psychologist);

BEHAVIORAL SUPPORT SERVICES (CONT.)

- is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;
- is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or
- is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.

SERVICES

PROGRAM DIRECTOR

§9.177(g) and 9.579(g)

The program provider must employ or contract with a person who oversees the provision of HCS or TxHmL program services to an individual. The person must:

- have at least three years paid work experience in planning and providing HCS or TxHmL program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer;
- or

PROGRAM DIRECTOR (CONT.)

- have both of the following:
 1. at least three years of experience planning and providing services similar to HCS or TxHmL program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

PROGRAM DIRECTOR (CONT.)

2. participation as a member of a Microboard as verified, in writing, by:
 - the certificate of formation of the non-profit corporation under which the Microboard operates filed with the Texas Secretary of State;
 - the bylaws of the non-profit corporation; and
 - a statement by the board of directors of the non-profit corporation that the person is a member of the Microboard.

SERVICES

CDS Option- HCS §9.168 and §9.170

Additional services through CDS option:

- supported employment
- employment assistance
- cognitive rehabilitation therapy
- nursing

SERVICES

CDS-Unbundling of Services-

TxHmL §9.554

This amendment removes the requirement that an individual receiving community support and respite must receive both services through CDS.

SERVICES

RESPITE

§9.174(a)(42)(43)

- respite includes support for eligible individuals who are in need of emergency or planned short-term care when the caregiver is temporarily unavailable to provide supports due to non-routine circumstances,
- respite may be provided in a camp accredited by the American Camp Association.
- Respite must not be provided in an institution such as an ICF/IID, skilled nursing facility, and hospital.

SERVICES

- The adopted rules remove the requirement that HCS and TxHmL program providers must provide at least one service component through a service provider employed by the program because CMS is no longer requiring this practice.

SERVICES

- **HCS Service Limits**: The adopted amendments delete service limits that expired August 31, 2013 in HCS and TxHmL and repeal the process in HCS created to obtain an exception to those service limits.
- **TxHmL Service Limits**: The adopted rules establish a new limit for adaptive aids of \$10,000 per IPC year
- **TxHmL Service Category Limits**: The adopted amendments eliminate the two service categories for TxHmL services, specifically, the Community Living Service Category and the Technical and Professional Supports Service Category) and the related service limits for the categories because these categories are not necessary for the operation of the program.

SERVICES

LOCAL AUTHORITY CHANGES

- **LOC Redetermination §9.162**: The adopted rules require the local authority to conduct a new level of care redetermination of an individual if an individual's level-of-need (LON) changes from a LON 5, LON 8, LON 6, or LON 9 to a LON 1. This requirement addresses a concern raised by CMS that individuals be appropriately assessed to ensure continued eligibility for the waiver program.

SERVICES

LOCAL AUTHORITY CHANGES

(CONT.)

- The adopted rules delete requirements for the local authority regarding an individual's enrollment that are addressed in the Performance Contract between DADS and a local authority and repeal and move to another section the description of a service coordinator's responsibilities when an individual transfers and make the service coordinator's responsibilities consistent with a service coordinator's responsibilities in the HCS Program.

SERVICES

LOCAL AUTHORITY CHANGES

(CONT.)

- Changes were made to §9.168(a) to clarify that the local authority does not have to comply with the requirements in paragraphs (1) - (5) if an applicant will receive residential support, supervised living, or host home/companion care.
- Changes were made to §9.168(c) to clarify that a local authority does not have to comply with the requirements in paragraphs (1) - (4) if an individual is receiving residential support, supervised living, or host home/companion care.

RULE REFERENCE

CHAPTER 49

Inclusion into HCS and TxHmL

This amendment replaces requirements (including those for complaint processes, reporting and training related to abuse, neglect, and exploitation, background checks and wage requirements for HCS and TxHmL service providers) with references to requirements addressed in Chapter 49, Contracting for Community Services.

RULE REFERENCE

As related to HCS and TxHmL

Contract Types: Provision or Standard

- Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.
- Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

RULE REFERENCE

Staff Member and Service Provider Requirements

- staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).

RULE REFERENCE

BACKGROUND CHECKS AND MINIMUM WAGE

The program provider must comply with §49.304 of this title (relating to Background Checks).

A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

CONSUMER ADVISORY COMMITTEE §9.178(f)

The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, LARs, community representatives, and family members that meets at least quarterly. The committee:

- at least annually, reviews the information provided to the committee by the program provider in accordance with subsection (p)(6) of this section;
- and
- based on the information reviewed, makes recommendations to the program provider for improvements to the processes and operations of the program provider.

RULE REFERENCE (CONT.)

§9.178 (p)

- p) At least annually, the program provider must:
 - 2) review complaints, as described in §49.309 of this title, and identify program process improvements to reduce the filing of complaints; (TxHmL §9.580(d))
 - 3) review incidents of abuse, neglect, or exploitation and identify program process improvements that will prevent the reoccurrence of such incidents and improve service delivery;
 - 5) evaluate critical incident data described in subsection (y) of this section and compare its use of restraint to aggregate data provided by DADS at www.dads.state.tx.us and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery;

RULE REFERENCE (CONT.)

§9.178 (j)

- j) The program provider must
 - i. comply with §49.310(4) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and
 - ii. ensure that all staff members, service providers, and volunteers:
 - a) comply with §49.310(3)(B) of this title.

PART II

EMPLOYMENT ASSISTANCE & SUPPORTED EMPLOYMENT



EMPLOYMENT ASSISTANCE

- Employment assistance is assistance to help an individual locate paid employment, as an additional service in the HCS and TxHmL Program to implement Texas Human Resources Code, §32.075 which requires DADS to provide employment assistance to individuals in the various Medicaid waiver programs. The specificity begins in 9.174(44) for HCS and 9.555(d) for TxHmL

EMPLOYMENT ASSISTANCE

§9.170(4)(j) and §9.573(a)(5)(G)

Before including employment assistance on an individual's IPC, the program provider must maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

EMPLOYMENT ASSISTANCE

§9.177(r) and 9.579(i)

Service providers of employment assistance or service providers of supported employment must

- be at least 18 years of age, is not the LAR of an individual receiving employment assistance or supported employment, AND
- have a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities; or
- have an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or
- have a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

EMPLOYMENT ASSISTANCE (CONT.)

The program provider must ensure that a service provider of employment assistance has:

- for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; or
- for unpaid experience, a written statement from a person who has personal knowledge of the experience.

SUPPORTED EMPLOYMENT

§9.174(a)(45) and §9.555(e)

The program provider must ensure that supported employment:

- is assistance provided to an individual:
 - i. who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed;
 - ii. in order for the individual to sustain competitive employment; and
 - iii. in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS and TxHmL Program waiver applications approved by CMS and found at www.dads.state.tx.us;

PART III

BACKUP PLANS



SERVICE BACKUP PLAN

9.174(a)(55) and 9.578(o)

If an HCS or TxHmL Program service is identified on the plan as critical to meeting the individual's health and safety a service back up plan must be developed.

The backup plan must:

- contain the name of the critical service;
- specify the period of time in which an interruption to the critical service would result in an adverse effect to the individual's health or safety; and
- in the event of a service interruption resulting in an adverse effect describe the actions the program provider will take to ensure the individual's health and safety.

SERVICE BACKUP PLAN (CONT.)

- ensure that:
 - i. if the action in the service backup plan required by subparagraph (A) of this paragraph identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and
 - ii. a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter; and

SERVICE BACKUP PLAN (CONT.)

- if the service backup plan is implemented:
 - i. discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;
 - ii. document whether or not the plan was effective; and
 - iii. revise the plan if the program provider determines the plan was ineffective.

PART IV

RULE AMENDMENTS RELATED TO WAIVER, SURVEY AND CERTIFICATION

- HCS- §9.171 & §9.185
- TxHmL- §9.576 and §9.577

§9.171

SUBCHAPTER TITLE CHANGE

OLD TITLE

- §9.171. Program
Provider Certification
Review and
Residential Visit.

NEW TITLE

- §9.171. DADS Review
of a Program
Provider and
Residential Visit.

EXIT CONFERENCE

DADS conducts an exit conference at the end of all on-site reviews, at a time and location determined by DADS, and at the exit conference gives the program provider a written preliminary review report.

INFORMAL REVIEW PROCESS

If a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review.

- the program provider must submit form 3610 "Informal Review Request" to DADS, as instructed on the form.
- DADS must receive the form within seven calendar days after the date of the review exit conference.
- DADS notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request and sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

INFORMAL PROCESS (CONT.)

If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

RESIDENTIAL REVIEWS

Based on the information obtained from a visit described in subsection (j) of this section, DADS may:

1. require the program provider to complete corrective action before the residential visit ends;
2. require the program provider to submit evidence of corrective action within 14 calendar days after the date of the residential visit; or
3. conduct a review of the program provider in accordance with this section.

PROGRAM PROVIDER COMPLIANCE AND CORRECTIVE ACTION

Describes the corrective action DADS takes as a result of DADS review of a program provider's compliance.

- a) DADS takes action against a program provider as a result of a review as described in 9.171 and 9.577.
- b) If DADS determines after a certification review, that a program provider is in compliance with all certification principles, DADS certifies the program provider and no action by the program provider is required.

FAILURE TO RECERTIFY

DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review, that:

1. at the time of the certification review, the program provider is not providing Program services to any individuals; and
2. for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide Program services for at least 60 consecutive calendar days.

CORRECTIVE ACTION PLANS (CAPs)

If DADS determines from a certification review that a program provider's failure to comply with one or more of the certification principles is not of a serious or pervasive nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.

CAP CRITERIA

- The corrective action plan required must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.
- Within 14 calendar days after the date DADS receives the corrective action plan, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:
 1. DADS certifies the program provider; and
 2. the program provider must complete corrective action in accordance with the corrective action plan.

FAILURE TO APPROVE CAP

If the program provider does not submit a corrective action plan, or DADS does not approve the plan, DADS:

1. imposes a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or
2. denies or terminates certification of the program provider.

DADS REVIEW OF CAP

DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan during DADS first review of the program provider after the corrective action completion date.

30 DAY FOLLOW UP REVIEW

If DADS determines at the end of a certification review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious or pervasive nature, DADS:

1. requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and
2. conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.

HAZARD TO HEALTH OR SAFETY

- j) If DADS determines from a certification review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:
1. denies or terminates certification of the program provider; and
 2. coordinates with the local authorities the immediate provision of alternative services for the individuals.

FALSIFICATION BY PROVIDER

- k) If DADS determines from a certification review that a program provider has falsified documentation used to demonstrate compliance, DADS:
 1. imposes a vendor hold against the program provider; or
 2. denies or terminates certification of the program provider.

EVIDENCE OF COMPLIANCE

If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in **the previous review**, DADS:

1. requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;
2. imposes or continues a vendor hold against the program provider; or
3. denies or terminates certification of the program provider.

VENDOR HOLD

If DADS imposes a vendor hold in accordance with this section:

1. for a program provider with a provisional contract, DADS initiates termination of the program provider's contract; or
2. for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and
 - a) if the program provider completed the corrective action, DADS releases the vendor hold; or
 - b) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.

FAILURE TO PAY MINIMUM WAGE

If DADS determines that a program provider is out of compliance with the Minimum Wage Requirements, corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of supported home living or community supports who was not paid the wages required, the difference between the amount required and the amount paid to the service provider.

PART V

PROHIBITIONS



PROHIBITIONS

§9.180 and §9.584

A program provider is prohibited from using seclusion.

Questions/Answers



Submit Additional Questions to:

hcs@dads.state.tx.us

txhml@dads.state.tx.us



Thank You!

